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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DARYLL RICHARDSON AND JOHN WALKER,
Petitioners,

v.

RONNIE LEE MCKNIGHT,
Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Are employees of a private, for-profit corrections corporation that performs some of the duties traditionally performed by a state department of corrections entitled to assert the defense of qualified immunity in a damage action brought under 42 U.S.C. § 1983, despite this Court's holding in *Wyatt v. Cole*, 504 U.S. 158 (1992), that private defendants may not invoke qualified immunity in a § 1983 action?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

A. Factual Background 1
B. Decisions Below 2

REASONS FOR DENYING THE WRIT 3

I. THERE IS NO SPLIT AMONG THE CIRCUITS . 4

II. THE SIXTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S HOLDING IN *WYATT v. COLE* 5

III. THE DENIAL OF QUALIFIED IMMUNITY DOES NOT MEAN THAT PRIVATE PARTIES WILL BE SUBJECTED TO SUBSTANTIAL LITIGATION BURDENS 8

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

Page(s)

Citrano v. Allen Correctional Ctr.,
891 F. Supp. 312 (W.D. La. 1995) 4

Duncan v. Peck,
844 F.2d 1261 (6th Cir. 1988) 3, 8

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 8, 9

Jordon v. Rothschild,
20 F.3d 1250 (3d Cir. 1994) 8

Leeks v. Cunningham,
997 F.2d 1330 (11th Cir.),
cert. denied, 114 S. Ct. 609 (1993) 4

Manis v. Corrections Corporation of America,
859 F. Supp. 302 (M.D. Tenn. 1994) 2, 5

McKnight v. Rees, 88 F.3d 417 (6th Cir. 1996) 2

Mitchell v. Forsyth, 472 U.S. 511 (1985) 9

Owens v. City of Independence,
445 U.S. 622 (1980) 5

Smith v. United States,
850 F. Supp. 984 (M.D. Fla. 1994) 4

Vector Research v. Howard & Howard Attys. P.C.,
76 F.3d 692 (6th Cir. 1996) 8

Williams v. O'Leary,
55 F.3d 320 (7th Cir.),
cert. denied, 116 S. Ct. 527 (1995) 4

Wyatt v. Cole,
504 U.S. 158 (1992) . . . . . *passim*

STATUTES

42 U.S.C. § 1983 . . . . . 1, 5

T.C.A. § 41-24-101 *et seq.* 1, 7

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STATEMENT OF THE CASE

A. Factual Background

Respondent Ronnie Lee McKnight is a prisoner at the South-Central Correctional Center (SCCC) in Tennessee. He filed an action for damages under 42 U.S.C. § 1983 against petitioners Daryll Richardson and John Walker, two prison guards employed by the Corrections Corporation of America (CCA), a private, for-profit corporation that operates the SCCC under contract with the Tennessee State Department of Corrections pursuant to Tennessee's Private Prison Contracting Act of 1986, T.C.A. § 41-24-101 *et seq*. Mr. McKnight asserts that the petitioners infringed his Eighth Amendment right to be free from cruel and unusual punishment by transporting him to the SCCC in handcuffs and ankle shackles that were far too tight for his large frame,

while showering him with abusive language and telling him to "suffer." Pet. App. at 46, 47. Mr. McKnight, who weighs 302 pounds and is in poor health, alleges that the cuffs and shackles cut off his circulation and caused extreme pain and swelling. *Id.* at 44-46. His discomfort was so evident that other inmates on the bus pleaded with petitioners to loosen the restraints. *Id.* at 45-46. By the time Mr. McKnight arrived at the SCCC, he could not walk without assistance. *Id.* at 47. His injury from the cuffs and shackles was so severe that he required hospitalization, and he continues to receive treatment to improve the blood circulation to his limbs. *Id.*

B. Decisions Below

Respondent filed this action on March 3, 1994, in the United States District Court for the Middle District of Tennessee against the two correctional guards responsible for his transportation.[1] Despite their status as employees of a private corporation, petitioners moved to dismiss on the basis of qualified immunity. Petitioners' motion was referred to a Magistrate Judge, who recommended that it be denied on the basis of *Manis v. Corrections Corporation of America*, 859 F. Supp. 302 (M.D. Tenn. 1994), which had rejected a qualified immunity defense for other employees of the CCA. The district court agreed, and overruled petitioners' objections. Pet. App. at 23. Petitioners filed an interlocutory appeal with the Sixth Circuit.

The Sixth Circuit affirmed, holding that private guards employed by a for-profit corporation that operates a correctional facility under contract with a state are not entitled to qualified immunity. *McKnight v. Rees*, 88 F.3d 417 (6th Cir. 1996). Relying on the statement in *Wyatt v.*

[1] Mr. McKnight also brought suit against John Rees, the Warden of the SCCC, but that claim was dismissed, and that dismissal is not before the Court.

Cole, 504 U.S. 158, 168 (1992), that "the rationales mandating qualified immunity for public officials are not applicable to private parties," the Sixth Circuit noted that, while qualified immunity is needed to protect "a government actor acting for the good of the state," it is not warranted for "a private actor acting for the good of the pocketbook," who has a "greater incentive to cut costs by infringing upon the constitutional rights of prisoners." Pet. App. 15 n.4, 16. Judge David A. Nelson concurred in a separate opinion. He agreed that both *Wyatt v. Cole* and the Sixth Circuit's decision in *Duncan v. Peck*, 844 F.2d 1261 (6th Cir. 1988), compelled the panel's ruling. Pet. App. 20-21. Judge Nelson noted, however, that if the panel were free to decide the case on public policy grounds, he would find that the petitioners were entitled to a qualified immunity defense. Pet. App. 19-20.

REASONS FOR DENYING THE WRIT

This Court should deny review. While petitioners are correct that the lower courts that have considered whether private actors are ever entitled to qualified immunity have reached conflicting conclusions, the decision below is the only appellate ruling on the precise question at issue here — namely, whether low-level employees of a private correctional institution should be entitled to qualified immunity. This issue has not been fully explored by the lower courts, and this Court's review would be premature where no circuit split has yet emerged. Moreover, for the reasons detailed below, the Sixth Circuit's decision is plainly consistent with this Court's qualified immunity precedents, and hence this Court's review is not required to rectify a clear error by a lower court.

I. THERE IS NO SPLIT AMONG THE CIRCUITS.

The Sixth Circuit is the first circuit to address the eligibility of privately employed prison guards for qualified immunity in a § 1983 action. Petitioners suggest that other circuits have ruled on related issues in a way that would indicate that they might resolve this question differently than the Sixth Circuit. Pet. at 12-13. But petitioners' speculation is based on cases involving high-level professionals who exercised significant discretion — a critical factor under a *Wyatt v. Cole* analysis. *See, e.g., Williams v. O'Leary*, 55 F.3d 320 (7th Cir.), *cert. denied*, 116 S. Ct. 527 (1995) (granting qualified immunity to private physician whose private employer held state contract to provide medical care to state prison system); *Leeks v. Cunningham*, 997 F.2d 1330 (11th Cir.), *cert. denied*, 114 S. Ct. 609 (1993) (granting qualified immunity to private physician under contract to provide medical services to county jail). No other circuit has address the qualified immunity issue in a case involving low-level employees, such as the prison guard petitioners here.

Respondent submits that, given the particular complexity of the qualified immunity issue in a prison context, where the potential for civil rights abuse is high, and given that consideration of this question has just begun in the lower federal courts, this Court should permit the issue to be considered in greater depth by the lower courts, and intervene only when, and if, an actual circuit split emerges.[2]

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[2] Excluding the instant case, there are only four district court decisions exploring the justifications for granting or denying immunity to privately employed prison guards. *See Citrano v. Allen Correctional Ctr.*, 891 F. Supp. 312 (W.D. La. 1995) (extending qualified immunity to private correctional officers); *Smith v. United States*, 850 F. Supp. 984 (M.D. Fla. 1994) (same); *Tinnen v. Corrections Corporation of America*, 1993 WL 738121 (W.D. Tenn. 1993) (unpublished) (same); *Manis v.* (continued...)

II. THE SIXTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S HOLDING IN *WYATT v. COLE*.

In *Wyatt v. Cole*, this Court "granted certiorari . . . to resolve a conflict among the Courts of Appeal over whether private defendants threatened with 42 U.S.C. § 1983 liability are, like certain government officials, entitled to qualified immunity from suit." 504 U.S. at 161. Having answered that question in the negative, there is no need for the Court to revisit a functionally identical question in this case.

As the Court noted in *Owens v. City of Independence*, 445 U.S. 622 (1980), immunity, either absolute or qualified, is only available to government officials where "the tradition of immunity was so firmly rooted in the common law *and* was supported by such strong policy reasons that 'Congress would have specifically so provided had it wished to abolish the doctrine.'" *Id.* at 164 (quoting *Pierson v. Ray*, 386 U.S. 547, 555 (1967)) (emphasis added). Petitioners do not argue that there is any common law basis for conferring qualified immunity on privately-employed prison officers. Rather, petitioners contend that, because private prison guards perform many of the functions historically performed by state employees, they should, as a matter of policy, be extended the same degree of protection from suits alleging violations of civil rights.

But this argument runs counter to the Court's reasoning in *Wyatt*. There, this Court held that "the rationales mandating qualified immunity for public officials are not applicable to private parties," 504 U.S. at 167, because "the nexus between private parties and the historic purposes of

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[2](...continued)
Corrections Corp. of America, 859 F. Supp. 302 (M.D. Tenn. 1994) (refusing to grant qualified immunity to private correctional officers).

qualified immunity is simply too attenuated to justify such an extension of our doctrine of immunity." *Id.* at 168. For public officials performing discretionary functions, qualified immunity is necessary to "preserve their ability to serve the public good," and "to ensure that talented candidates [are] not deterred by the threat of damages suits from entering public service." *Id.* at 1833. Private parties, in sharp contrast, "hold no office requiring the exercise of discretion; nor are they principally concerned with enhancing the public good." *Id.*

Wyatt also emphasized that the protection of qualified immunity "acts to safeguard government, and thereby to protect the public at large, not to benefit its agents." *Id.* Thus, the relevant inquiry is not whether these specific petitioners might be distracted from their functions by the pendency of a lawsuit against them, but whether private corrections corporations, *as institutions,* can function smoothly and recruit employees in the absence of qualified immunity.

The Sixth Circuit examined this very issue and correctly held that the justifications for extending qualified immunity to private corrections corporations' employees are unpersuasive:

> [W]hile privately employed correctional officers are serving the public interest by maintaining a correctional facility, they are not principally motivated by a desire to further the interest of the public at large. Rather, as employees of a private corporation seeking to maximize profits, correctional officers act, at least in part, out of a desire to maintain the profitability of the corporation for whom they labor, thereby ensuring their own job security.

Pet. App. at 15. Given that "private corporations running correctional facilities have a greater incentive to cut costs by

infringing upon the constitutional rights of prisoners in order to ensure the profitability of the enterprise," Pet. App. at 16, public policy considerations militate against conferring qualified immunity on privately employed correctional officers.

This Court has *never* held that a private actor is entitled to qualified immunity under § 1983, even when presented with markedly more sympathetic facts than here. In *Wyatt*, this Court held that qualified immunity was unavailable to private-party defendants even where they had relied in good faith on the constitutionality of a state statute. In the instant case, private-party defendants neither acted in concert with state actors, nor relied on state statutes or policies, nor in any way took their guidance from the state in manifesting indifference to a prisoner's dire medical needs. Even the narrowest reading of *Wyatt* confirms the correctness of the Sixth Circuit's holding that, in these circumstances, private prison guards are not entitled to qualified immunity.

Finally, it bears noting that the Tennessee Legislature left no doubt that it did not intend to confer sovereign immunity on CCA or other private corrections contractors. T.C.A. § 41-24-107 provides that:

> The sovereign immunity of the state shall not apply to the contractor. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity in any action arising out of the performance of the contract.

Surely, if the Tennessee Legislature saw no reason to afford CCA and its employees immunity from general state law claims, there is no policy justification for providing immunity from civil rights actions, such as the one respondent has filed.

III. THE DENIAL OF QUALIFIED IMMUNITY DOES NOT MEAN THAT PRIVATE PARTIES WILL BE SUBJECTED TO SUBSTANTIAL LITIGATION BURDENS.

To the extent that petitioners argue that a qualified immunity defense must be available to private correctional guards to insulate them from the burdens of defending claims, Pet. at 15, their argument is substantially overstated. In *Wyatt*, this Court noted that "an affirmative defense based on good faith and/or probable cause" could potentially be available to "private defendants faced with § 1983 liability." 504 U.S. at 169. Indeed, on remand, the Fifth Circuit in *Wyatt* recognized such a "good faith" defense and affirmed the no-liability finding of the district court. 994 F.2d 1113 (5th Cir. 1993).

The Sixth Circuit similarly recognizes a good faith defense for private parties in § 1983 actions. *See Duncan v. Peck*, 844 F.2d 1261 (6th Cir. 1988) (granting summary judgment for private-party defendant who established a good faith defense); *Vector Research v. Howard & Howard Attys. P.C.*, 76 F.3d 692 (6th Cir. 1996) (holding that private-actor defendants had a good-faith defense to a *Bivens* claim, which the court noted was the federal-officer counterpart to a § 1983 action). The Third Circuit, too, recognizes that private parties acting under color of law are entitled to a good faith defense where there is no proof that they subjectively appreciated the unlawfulness of their conduct. *Jordon v. Rothschild*, 20 F.3d 1250 (3d Cir. 1994).

As Justice Kennedy noted in his concurrence in *Wyatt*, which was joined by Justice Scalia, although the departure from common law immunity principles in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), was uniquely "justified by special policy considerations arising from public officials' exposure to repeated suits," developments since that time make further departures unwise. 504 U.S. at 169, 171. Justice Kennedy wrote:

> I would not extend [the *Harlow*] approach to other contexts. *Harlow* was decided at a time when the standards applicable to summary judgment made it difficult for a defendant to secure summary judgment regarding a factual question such as subjective intent, even when plaintiff bore the burden of proof on the question. . . . However, subsequent clarifications to summary-judgment law alleviated that problem . . . . . Under the principles set forth in *Celotex* [477 U.S. 317 (1986)] and related cases, the strength of factual allegations such as bad faith can be tested at the summary judgment stage.

Id.

Even Judge Nelson's concurring opinion in the instant case notes that "the courts' increasingly benign attitude toward summary judgment proceedings may frequently mean that there will be little practical difference between the good faith defense . . . and . . . qualified immunity." Pet. App. at 22.[3] Thus, the rationale of *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985), for permitting immediate appeal of a qualified immunity denial — that "qualified immunity is in fact an entitlement not to stand trial in certain circumstances" because trial is typically burdensome — is inapplicable. Where litigation burdens may well be minimal because of the defenses available to a private party defendant, there is no need for this Court's interlocutory review of a qualified immunity denial.

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[3] We do not suggest that the good faith defense will succeed in the present case, where the conduct was so egregious that benign subjective intentions will be difficult to prove. Petitioners would be no less likely to escape the rigors of trial were qualified immunity available to them, however, as their conduct violated clearly established Eighth Amendment rights that a reasonable person would have known about. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

CONCLUSION

For the reasons set forth above, the Petition should be denied.

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[*] Counsel wishes to acknowledge the substantial assistance provided by Claudia Polsky, a recent law school graduate.